

ELINOR H. KERPELMAN,	:	IN THE
Complainant	:	CIRCUIT COURT NO. 2
v.	:	OF
FRANCIS B. BURCH,	:	BALTIMORE CITY
Attorney General of Maryland,	:	
Defendant	:	78-A-228/42831A
:	:	
:	:	
:	:	

10-6-70
(17)

ORDER OF COURT

The Court, having heard argument of counsel on Defendant's Motion for Summary Judgment as to the First Count of the Bill of Complaint filed herein, having duly considered the matter, and having rendered verbal opinion wherein the Motion was granted, it is this 6th day of October, 1970, by the Circuit Court No. 2 of Baltimore City

ORDERED, that the First Count of the Bill of Complaint filed herein be and the same is hereby dismissed and that the relief prayed as regards the First Count of the Bill of Complaint filed herein be and the same is hereby denied, and it is further ordered that the costs of Court are to be assessed against the Complainant.



JUDGE

J. Kerpeleman

SUPREME BENCH OF BALTIMORE CITY

CENTRAL ASSIGNMENT BUREAU

Daily Docket For The Courts

Assignment for Judge James A. Perrott April 1, 19 70

Nos. Stenographer.....

Clerk.....

	Name of Case	Time Sent	Judge	Disposition
CC-2-A-42831 2914-A Merits	Elinor H. Kerpelman		Leonard J. Kerpelman	

vs

Francis B. Burch

William W. Cahill
Robert F. Sweeney

Order to be signed

ELINOR H. KERPELMAN,

Complainant

v.

FRANCIS B. BURCH,

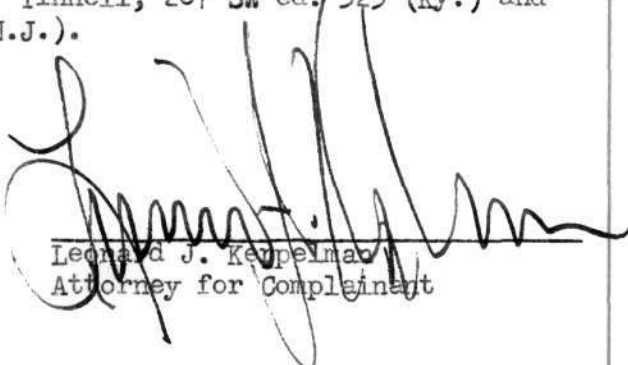
Defendant

78A-228
42 831 A
1-19-70
(16)

MEMORANDUM OF POINTS
AND AUTHORITIES

1. Md. Rule 301 i "Scandalous matter may be stricken...".
2. Mississippi v. Johnson, 71 U.S. 475 (1866) At 498: "The single point which requires consideration is this: Can the President be restrained by injunction from carrying into effect an act of Congress alleged to be unconstitutional?" (Held: He cannot.)

The case is cited only to show that it is inapplicable, as Mr. Agnew is not sought to be restrained from carrying out any unconstitutional act as Vice President; it is respectfully argued that it is not believed to be the case, that Mr. Agnew's acts as Vice President are sought to be enjoined.
3. Md. Rule 401 a. "At any time after jurisdiction has been obtained over any defendant, ...any party...may...cause the testimony of any person, whether a party or not, to be taken by deposition for the purpose of discovery, or for use as evidence in the action, or both."
4. Md. Rule 5 q: "'Person', means any natural person, partnership, (or) joint stock company...", which, it is respectfully argued, would seem to include Mr. Agnew just as much as anybody else.
5. CJS Process Sec. 84: "One who...enters a state...solely for the performance of a duty of a public nature...is generally privileged from service of civil process...However...(the exemption) will not apply where the person served was not acting in a governmental capacity." Citing American Industrial Finance v. Sholz, 279 Ill. App. 45.
6. CJS Officers. Sec. 132, Actions against Officers: "Courts should not discourage actions on the part of citizens to compel a strict observance by public officials of their duties but, as far as authorized by law, should encourage such practice." Citing Veith v. Timmell, 207 SW ed. 325 (Ky.) and Al Walker, Inc. v. Borough, 130 A2d 372 (N.J.).


Leonard J. Kerpeleman
Attorney for Complainant

ELINOR H. KERPELMAN,

Complainant

v.

FRANCIS B. BURCH,

Defendant

IN THE

CIRCUIT COURT

NO. 2 OF

BALTIMORE CITY

Case #42831A

78A-228

1-19-70

(15)

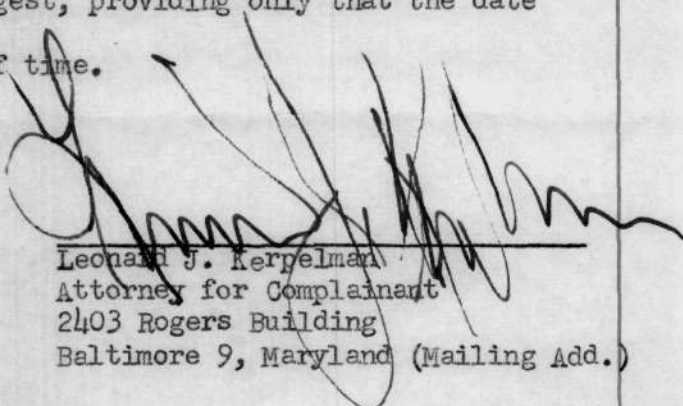
ANSWER TO MOTION
TO QUASH

Now comes Elinor H. Kerpelman, Complainant, by Leonard J. Kerpelman, her attorney, and for answer to the Motion to Quash heretofore filed herein on approximately December 30, 1969, says:

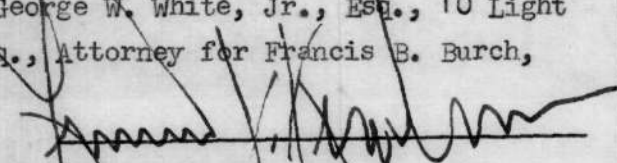
1. She denies that all of the information requested by the subpoena has been "on several occasions disclosed" to the Complainant or her attorney; she further states that she is entitled to much more detailed and further information than the simple "raw data"; and she further states that whether or not "said information has been duly reported by the press" is of no consequence to her, nor any assistance in the process of discovery.
2. She denies that the pending "Motion for Summary Judgment" will dispose of the entire case.
3. The Complainant denies that she had knowledge that at the time the subpoena was made returnable to, it was "public knowledge" that the movant would be in the Far East; on the contrary, the press reported that he would have returned to this country at least one week prior thereto. The Complainant's attorney emphatically denies that the said subpoena was issued as "an harassment", and moves that the said allegations be stricken herefrom as scandalous, under the Maryland Rules. No "Xerox copy" of any release was attached to the copy which was mailed to the Complainant's attorney, and no answer is therefore supplied herein to the allegations concerning such a "Xerox copy".
4. All matters complained of in the suits at issue occurred prior to the time that the movant was an officer of the

United States of America, and he was then a citizen of Maryland, and acted as a citizen and official of Maryland, and it is for his acts as an official of Maryland that these inquiries are to be conducted in furtherance of the discovery procedure. No objective will be served by postponing the discovery procedure pending any motion for summary judgment, as the motion and the answer thereto show a clear dispute as to material facts; further, other disputes as to material facts may reasonably be expected to be disclosed by the very deposition which the subpoena is related to.

The Complainant has no desire whatsoever to interfere with the performance of the movant's duties as Vice President of the United States of America; on the contrary, the Complainant sent to the movant's office in far sufficient time to have received an answer before the issuance of the subpoena, a very polite and diplomatic request to arrange for the deposition at a time and place convenient to the movant; this the Complainant is, of course, still willing to do; further, the Complainant has assumed, since it appeared after the issuance of the subpoena that the undisclosed plans of the movant would keep him out of the country on the return day of the subpoena, that the deposition would be postponed, and the Complainant has no objection to this postponement whatsoever; as a matter of fact, a simple telephone call from the movant's office will certainly effect the full cooperation of the Complainant in taking of the deposition of the movant at such time and place as the movant may at his full discretion suggest, providing only that the date is one within a reasonably short period of time.


 Leonard J. Kerpelman
 Attorney for Complainant
 2403 Rogers Building
 Baltimore 9, Maryland (Mailing Add.)

I hereby certify that on this 16 day of January, 1970, a copy of the foregoing Answer to Motion to Quash was mailed, as well as of the following Memorandum of Points and Authorities, to George W. White, Jr., Esq., 10 Light st., Baltimore, Md.; and to Fred Oken, Esq., Attorney for Francis B. Burch, 1201 One Charles Center, Baltimore, Md.



ELINOR H. KERPELMAN
Complainant

vs.

FRANCIS B. BURCH
Defendant

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IN THE
CIRCUIT COURT NO. 2
OF
BALTIMORE CITY
Case No. 42831-A

78A 228 (14)
1-2-1976

MOTION TO QUASH

Spiro T. Agnew, by George W. White, Jr., his attorney, respectfully moves the Court, pursuant to Maryland Rules 115, 406 and 407b, to quash the Subpoena Duces Tecum filed in these proceedings on the following grounds:

1. This Movant has on several occasions disclosed all of the data requested by the Subpoena and the said information has been duly reported by the press.

2. There is presently pending a Motion for Summary Judgment in these proceedings which may dispose of the entire case.

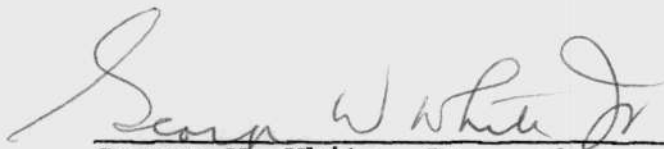
3. At the time the Subpoena was issued in this case, it was a matter of public knowledge that this Movant would be in the Far East at the time to which the said Subpoena was made returnable. The Complainant's attorney caused the said Subpoena to be issued as an harrassment and for publicity purposes, as evidenced by the press release distributed by the Complainant's attorney, a xerox copy of which is attached hereto and prayed to be taken as part hereof.

4. The issuance of the said Subpoena violates the separation of powers required by the Constitutions of the State of Maryland and of the United States of America.

Alternatively, and only in the event that the Court declines to grant the foregoing Motion to Quash, this Movant prays the Court to postpone the operation of the said Subpoena until after the Motion for Summary Judgment, referred to in paragraph 2 above, shall have been determined.

If said Motion for Summary Judgment be denied, and

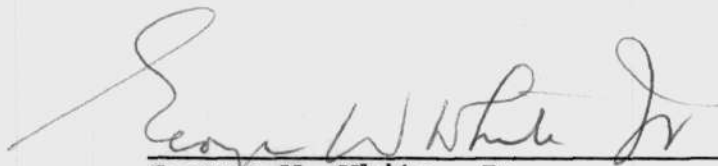
if the Court declines to grant the foregoing Motion to Quash, this Movant prays the Court to postpone the operation of the said Subpoena to such time and place as will not interfere with the performance of this Movant's duties as the Vice President of the United States of America; and, in support thereof, he respectfully shows that he will be in the Far East on the business of the Government on January 5, 1970, the date to which the said Subpoena was made returnable.



George W. White, Jr. *mc*
Buckmaster, White, Mindel & Clarke
10 Light Street
Baltimore, Maryland 21202
685-6747

Attorney for Movant

I HEREBY CERTIFY that on this 31 day of December, 1969, a copy of the foregoing Motion to Quash was mailed, postage prepaid, to Leonard J. Kerpelman, Esquire, 8th Floor, Tower Building, Baltimore, Maryland 21202, Attorney for Complainant.



George W. White, Jr. *mc*

Attorney for Movant

FOR IMMEDIATE RELEASE

AGNEW DEPOSITION
IN
WETLANDS CASE

The Baltimore County Sherriff will serve Vice President Agnew with a subpoena requesting the production of all records of personal land transactions while Governor of Maryland, to be produced at a deposition in a Baltimore Circuit Court No. 2 Case. This service by the Sherriff will be at 7PM. Wednesday, December 10 at the Blue Coast North, 400 Reisterstown Road, Pikesville (outside of Baltimore). Agnew will be present to address a dinner of Greek-Americans.

Send a photographer.

The suit concerns sale of public "Wetlands" by the Maryland Board of Public Works when Agnew was its Chairman, for \$100 an acre to private developers who later re-sold for as much as \$40,000 per acre.

ELINOR H. KERPELMAN
Complainant

vs.

FRANCIS B. BURCH
Defendant

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IN THE
CIRCUIT COURT NO. 2
OF
BALTIMORE CITY
Case No. 42831-A

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MEMORANDUM OF POINTS AND AUTHORITIES

Mississippi vs. Johnson, 71 U.S. 475 (1866)

Opinions of the Attorney General of the
United States (January 9, 1905), 25 OAG, page 326

ELINOR H. KERPELMAN
Complainant

vs.

FRANCIS B. BURCH
Defendant

IN THE
CIRCUIT COURT NO. 2
OF BALTIMORE CITY
78A/228/42831A

.....

ANSWER TO MOTION FOR
SUMMARY JUDGEMENT

12-16-69
(13)

Now comes the plaintiff, and says that there is a genuine dispute as to material facts:

1. Whether in fact, taking the position that submerged title lands of Maryland are alienable by the state, is a position which represents a proper interest of the state of Maryland.

2. Whether the consideration paid for the submerged lands in question was so inadequate as to raise an inference, or a rebuttable presumption, that the Board of Public Works could not have had an opinion that it was "adequate".


Leonard J. Kerpelman
Attorney for Complainant


Copy mailed Wm C. Cahill, Jr., Esq.
and Robt F. Sweeney, Esq.



Copies mailed: (Dec. 14)

~~I hereby:~~ Robert F. Sweeney Deputy Attorney General
1201 Charles Center

William W. Chaili Jr. Esquire
10 Light Street 20th. Floor
Baltimore, Maryland 21202


Leonard J. Kerpelman
Attorney for Complainant

MEMORANDUM
OF
POINTS AND AUTHORITIES

1. Maryland Constitution, section on Duties of Attorney General.
2. Statute in Maryland Code on Duties of Attorney General.

500

ELINOR H. KERPELMAN,

Complainant

v.

FRANCIS B. BURCH,

Defendant

IN THE
CIRCUIT COURT NO. 2

OF
BALTIMORE CITY

42831-A
12
12-8-69

SUBPOENA DUCES TECUM

Mr. Clerk:

Please issue summons in the above case, for the taking of the deposition upon oral examination of,

The Honorable Spiro T. Agnew
The White House
Washington, D. C.

AND HAVE HIM PRODUCE all books, records, papers, memoranda, notations, accounts and lists containing references to real or leasehold properties bought, sold, or owned by him, individually, or with others, during the years 1965 through 1969 inclusive.

INSTRUCT the Sheriff to ~~await my instructions as to service within the State of Maryland.~~ *at 8 PM DEC. 10.*

AND MAKE SAME RETURNABLE, at 10 A. M., on the 5th day of November, 1969, before Richmon Gore, Notary Public, at the Offices of Leonard J. Kerpelman, Attorney, 500 Equitable Building, Baltimore, Maryland, and day to day thereafter, until the said oral examination has been completed.

Leonard J. Kerpelman
Attorney for Complainant

*Gordon Kirby
clerk*

	COST	\$ 5.00
SUMMONED		12/10 1969
NON EST		196
NON SUNT		196
COPY LEFT		196

GI. B-RT L. DEYLE, SHERIFF
OF BALTIMORE COUNTY

5 to copies

Sherriff



MARVIN MANDEL
GOVERNOR

EXECUTIVE DEPARTMENT

ANNAPOLIS, MARYLAND 21404

November 5, 1969

Honorable Francis B. Burch
Attorney General of Maryland
1 Charles Center
Baltimore, Maryland 21202

10-7-69
(9)

Dear Attorney General Burch:

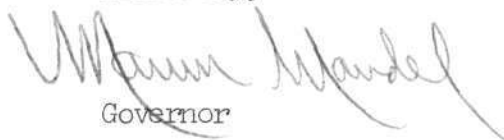
This is in reply to your letter of October 21, 1969, relating to Mr. Kerpelman's allegation of a conflict of interest in connection with your representing the Board of Public Works in certain pending litigation.

I reviewed the allegations, the pertinent facts, and the pleadings, and could discern no conflict of interest on your part. However, as I am one of the defendants in the action, I believed that the question of an alleged conflict should be reviewed by an impartial group. Consequently, I requested the President of the Maryland State Bar Association to refer the matter to the Association's Committee on Ethics in order that the Committee could give me an advisory opinion concerning the allegation.

On October 29, 1969, the Committee on Ethics held a meeting at which they heard from Mr. Kerpelman and yourself and reviewed the relevant documents. By letter dated October 30, 1969, the Committee informed the President of the Maryland State Bar Association that it found "no evidence of unethical conduct on the part of the Attorney General or his office." The President in turn has forwarded the Committee's report to me.

Based upon my review of the matter, together with the report by the Committee on Ethics of the Maryland State Bar Association, I have concluded that the allegation of a conflict is unfounded. Therefore, pursuant to the authority vested in me by Article V, section 3, of the Maryland Constitution, I request that you continue to represent the defendants in the subject litigation.

Sincerely,


Governor

Leonard J. Kerpelman

ELINOR H. KERPELMAN,
Plaintiff

v.

FRANCIS B. BURCH,
Defendant

Robert F. Sweeney Esq.

IN THE
CIRCUIT COURT
NO. 2 OF
BALTIMORE CITY
78A/228/42831A

· · · · ·
MOTION FOR
HEARING IN
OPEN COURT

11-6-69
(7)

2914-A ✓

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The above case being at issue upon Bill and Answer, the Plaintiff under the 560th Rule of this Honorable Court, prays leave to be heard upon the matter in open court.

[Signature]
Leonard J. Kerpelman
Attorney for Plaintiff

I HEREBY CERTIFY that a copy of the foregoing was mailed this 4th day of November, 1969, to Robert F. Sweeney, Esq., 1201 One Charles Center, Baltimore 2, Maryland.

[Signature]
Leonard J. Kerpelman

✓
P-229

ELINOR H. KERPELMAN,

Complainant

v.

FRANCIS D. BURCH,

Defendant

IN THE

CIRCUIT COURT NO. 2

OF

BALTIMORE CITY

NOTICE OF DEPOSITION

78B-228
42-831B
11-3-69 (6)
Complaint
Fd. Dct.

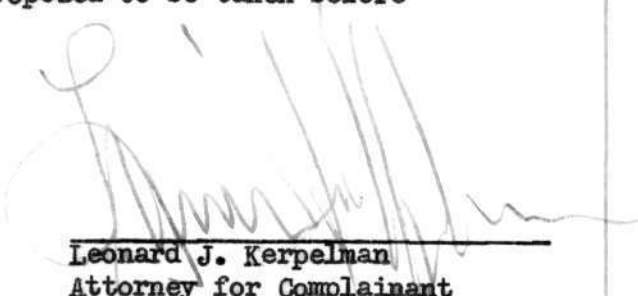
To the Defendant:

The Complainant herein, Elinor H. Kerpelman, by Leonard J. Kerpelman, her attorney, notifies you so:

Pursuant to the Maryland Rules, she intends to take the deposition, upon oral examination, of

Spiro T. Agnew
Business Address:
The White House
Washington, D.C.,

at the office of Leonard J. Kerpelman, her attorney, 500 Equitable Building, Baltimore 2, Md., on November 14, 1969 at 10 A. M. or such near date thereto as may be more convenient to the deponent; said deposition is proposed to be taken before Richmon Gore, Notary Public.


Leonard J. Kerpelman
Attorney for Complainant

I HEREBY CERTIFY that on this 30th day of October, 1969, a copy of the foregoing was mailed to William W. Cahill, Jr., Esq., 20th Floor, 10 Light Street, Baltimore 2, Md.


Leonard J. Kerpelman

ELINOR H. KERPELMAN	:	IN THE
Complainant	:	CIRCUIT COURT #2
vs.	:	OF
FRANCIS B. BURCH,	:	BALTIMORE CITY
Attorney General of Maryland	:	78A/228
Defendant	:	42831A
	:	
:::	:::	10-21-69
		(5)

ANSWER

TO THE HONORABLE, THE JUDGE OF SAID COURT:

Now comes Defendant, Francis B. Burch, in his capacity as Attorney General of Maryland, by his attorney, Robert F. Sweeney, Deputy Attorney General, and in his individual capacity, by his attorney, William W. Cahill, Jr., and, in answer to the Bill of Complaint for an Injunction, and each and every paragraph thereof, says:

1. That in answer to Paragraph 1 of said Bill of Complaint, he admits that litigation, captioned "Kerpelman v. Mandel, et al.", Circuit Court No. 2 of Baltimore City, Docket 78A, Folio 142, File No. 42686-A", was filed by the Complainant herein; that on August 7, 1969, he filed a Demurrer and Memorandum in support thereof on behalf of the Defendant Board of Public Works of Maryland in that litigation; and that on September 29, 1969, the litigation was dismissed by Order of Court, upon payment of costs by the Complainant, after the Demurrers and Motions Raising Preliminary Objections of various defendants had been sustained with leave granted to the Complainant herein to amend her Bill of Complaint within 20 days. He avers that Complainant's characterization of the legal and factual allegations raised in that litigation, contained in Paragraph 1 of the present Bill

of Complaint, should be disregarded by this Honorable Court, the Bill of Complaint in that terminated litigation being the best evidence of its contents. He denies the remaining allegations of Paragraph 1 of the Bill of Complaint.

2. That he denies the allegations contained in Paragraph 2 of the Bill of Complaint, except that he admits that his appearance was entered as counsel for the Defendant Board of Public Works of Maryland in the terminated litigation entitled "Kerpelman v. Mandel, et al., Circuit Court No. 2 of Baltimore City, Docket 78A, Folio 142, File No. 42686-A" and has also been entered as counsel for Defendant Board of Public Works of Maryland in the pending litigation, captioned "Kerpelman v. Mandel, et al., Circuit Court for Worcester County, Chancery No. 8934", filed on September 30, 1969; and that he filed a Demurrer, sustained by the Circuit Court No. 2 of Baltimore City, to the Bill of Complaint in the terminated litigation.

3. Because no additional allegations are contained in Paragraph 3 of the Bill of Complaint, no answer is required to that paragraph.

4. That he denies the allegations contained in Paragraph 4 of the Bill of Complaint, except that he admits that he is constitutionally required, by Article V, Section 3 of the Maryland Constitution, to provide legal representation to the Board of Public Works of Maryland in actions brought against it.

5. Because no additional allegations are contained in Paragraph 5 of the Bill of Complaint, no answer is required to that paragraph.

6. That he denies the allegations contained in Paragraph 6,

ELINOR H. KERPELMAN	:	IN THE
Complainant	:	CIRCUIT COURT #2
vs.	:	OF
FRANCIS B. BURCH,	:	BALTIMORE CITY
Attorney General of Maryland	:	78A/228
Defendant	:	42831A
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10-21-69
④

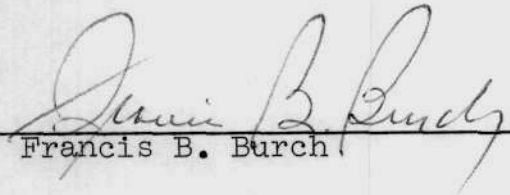
ANSWER OF DEFENDANT
TO COMPLAINANT'S INTERROGATORIES

The Defendant, Francis B. Burch, in answer to the Interrogatories propounded to him by the Complainant, Elinor H. Kerpelman, states as follows:

QUESTION: What lands do you own, or have any interest in, in Worcester county; and what lands do you elsewhere own, or have an interest in, in Maryland, which are near or contiguous to bodies or streams of navigable water; and answer likewise as to members of your immediate family?

ANSWER: I have an interest, along with nine other partners, in two parcels of land in Worcester County, Maryland. They are contiguous ocean-front lots in the northern part of Ocean City, Maryland. The first parcel, with 200 feet of ocean front, was acquired by the partnership by deed dated March 15, 1969, recorded among the Land Records of Worcester County on April 3, 1969. The second parcel, with 245 feet of ocean front, is under option to the partnership dated January 9, 1969. I own, or have an interest in, no other land in Worcester County, Maryland. Neither of the members of my immediate family nor I own, or have an interest in, any other land in Maryland which is near or

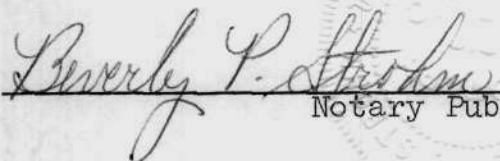
contiguous to bodies or streams of navigable water.


Francis B. Burch

STATE OF MARYLAND
County
CITY OF BALTIMORE to wit:

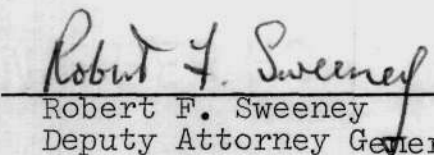
I HEREBY CERTIFY that on this *21st* day of October, 1969, before me, the subscriber, a Notary Public of the State of Maryland in and for Baltimore *County* ~~City~~, personally appeared Francis B. Burch who made oath in due form of law that the matters and facts set out in the foregoing Answer are true to the best of his knowledge, information and belief.

WITNESS my hand and Notarial Seal.


Notary Public

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 21st day of October, 1969, a copy of the foregoing Answer was mailed, postpaid, to Leonard J. Kerpelman, Esquire, 500 Equitable Building, Baltimore, Md. 21202, Attorney for Complainant.


Robert F. Sweeney
Deputy Attorney General

except that he admits that Chapter 402 of the Laws of Maryland of 1969 amended Article 19A of the Maryland Code, title "Conflict of Interest", and that he admits the partial ownership of two parcels of real estate located in Ocean City, Maryland, upon which it is anticipated that an inn will be built, which interest is more specifically described in Paragraph 7, infra.

And further answering, says:

7. That he, in and through a partnership with nine others known as "Ocean City Joint Venture & Partnership", purchased 200 feet of ocean-front property in the northern part of Ocean City, Maryland, by deed dated March 15, 1969, and recorded on April 3, 1969. This same entity purchased on January 9, 1969, an option on an adjoining parcel of land consisting of an additional 245 feet of ocean-front property. He is one of four trustees, all of whom are partners, authorized by the Joint Venture and Partnership Agreement to act on behalf of all the partners in the venture. The entity has purchased a franchise from Holiday Inns of America, has solicited bids from several construction companies, and anticipates in the near future the commencement of construction at this site of a Holiday Inn facility opening on or about April 15, 1971. His capital share in this undertaking is approximately 10.5%. He owns no other real estate in Maryland, either directly or indirectly, which fronts upon either ocean, rivers, bays, streams, or other navigable bodies of water.

8. That the decisions of the Board of Public Works of Maryland being tested by the Complainant in "Kerpelman v. Mandel, et al., Circuit Court for Worcester County, Chancery No. 8934" are those authorizing transfer by the State of Maryland of 190 acres of "wetlands" property to James B. Caine, Inc., a Maryland

corporation, and 197 acres of "wetlands" property to Maryland Marine Properties, Inc., a Maryland corporation, both of which transfers of land involved land in and abutting tidal bays in Worcester County, Maryland.

9. That Complainant is challenging, first, the authority of the Board of Public Works of Maryland to dispose of these two tracts of "wetlands" property alleging that "wetlands" property cannot be conveyed from public to private ownership, and, second, the good faith of the Board of Public Works of Maryland in making these transfers because of the inadequacy of the consideration paid for them.

10. That with respect to Complainant's first allegation outlined in Paragraph 9 of this Answer, supra (directly contrary to the scurrilous innuendos and malicious suggestions of impropriety contained in Paragraphs 2, 4 and 6 of the Bill of Complaint filed in the within proceeding), the Defendant denies that he "has a direct financial interest in having the question of ownership of submerged lands in front of shore lands on navigable waters ... resolved against the people and the State of Maryland"; to the contrary, the Defendant states that he has no personal interest whatsoever in the outcome of said litigation; and the Defendant further denies that he "has a direct financial interest in placating and favoring county zoning and public officials of Worcester County", stating that at the time of the purchase of the 200 feet of ocean-front property and the acquisition of the option for the additional 245 feet of ocean-front property by the partnership, of which the Defendant is a member, all of said ocean-front property was then and is now zoned for the use intended, and in addition, at the time of said acquisitions, public water and sewer existed along the entire western property line of said property; and the Defendant further states that all that need be done by any public officials in Worcester County

with respect to the development of said ocean-front property is the ministerial duty of issuing a building permit upon application and payment of the fees therefor by the partnership and the granting of a height variance by the Board of Zoning Appeals of Ocean City in accordance with that Board's consistently applied and unvaried practice of granting such variances upon application.

11. That with respect to Complainant's second allegation outlined in Paragraph 9, supra, no possibility of conflict of interest, either direct or indirect, exists.

12. That, in order that there can be no shadow of doubt as to the propriety of Defendant's conduct in representing the Board of Public Works of Maryland in "Kerpelman v. Mandel, et al., Circuit Court for Worcester County, Chancery No. 8934" and despite Defendant's firm belief that no real or imagined conflict exists, he has followed the express procedure set out in Article 19A, Sections 1-3 of the Maryland Code and has written the Governor of Maryland regarding this matter, pursuant to Section 3 of that Article, a copy of which letter is attached hereto as Exhibit A.

WHEREFORE, Defendant prays that the Bill of Complaint for an Injunction be dismissed with prejudice and that all costs therefor be assessed against the Complainant.

Robert F. Sweeney

Robert F. Sweeney
Deputy Attorney General
1200 One Charles Center
Baltimore, Md. 21201
539-4833

Attorney for Defendant in his capacity
as Attorney General of Maryland

William W. Cahill, Jr.

William W. Cahill, Jr.
10 Light Street
Baltimore, Md. 21202
539-2125

Attorney for Defendant in his
individual capacity

STATE OF MARYLAND
County
~~CITY OF~~ BALTIMORE to wit:

I HEREBY CERTIFY that on this *21st* day of October, 1969, before me, the subscriber, a Notary Public of the State of Maryland in and for Baltimore *County* ~~City~~, personally appeared Francis B. Burch, Defendant in the subject litigation, and made oath in due form of law that the matters and facts contained in each and every paragraph are true and accurate to the best of his knowledge, information and belief.

WITNESS my hand and Notarial Seal.

Francis B. Burch
Francis B. Burch

Beverly P. Strohme
Notary Public

I HEREBY CERTIFY that on this *21st* day of October, 1969, a copy of the foregoing Answer was mailed, postpaid, to Leonard J. Kerpelman, Esquire, 500 Equitable Building, Baltimore, Maryland, 21202, Attorney for Complainant.

Robert F. Sweeney
Robert F. Sweeney
Deputy Attorney General

EXHIBIT A

OFFICES OF



THE ATTORNEY GENERAL
ONE CHARLES CENTER
BALTIMORE, MARYLAND 21201

FRANCIS B. BURCH
ATTORNEY GENERAL

October 21, 1969

Honorable Marvin Mandel
Governor of Maryland,
State House
Annapolis, Maryland

Dear Governor Mandel:

Leonard J. Kerpelman, Esq. represents the complainant in a suit recently filed and now pending in the Circuit Court for Worcester County (Kerpelman v. Mandel, et al, Circuit Court for Worcester County, chancery #8934, filed September 30, 1969) which seeks a reconveyance of the wetlands transferred by the Board of Public Works of Maryland to James B. Caine, Inc. and Maryland Marine Properties, Inc. Because Article V, Sect. 3 of the Maryland Constitution requires that I represent agencies and departments of the State Government, the suit papers were forwarded to me and I have just entered my appearance on behalf of the Board of Public Works of Maryland. The Bill of Complaint questions the authority of the Board of Public Works of Maryland to transfer wetlands property from public ownership to private ownership and alleges fraud and bad faith on the part of the members of the Board of Public Works, because of the purportedly inadequate consideration supporting the transfer.

Mr. Kerpelman, by a separate suit now seeks to enjoin me from representing the Board of Public Works of Maryland in the Worcester County litigation because of an alleged conflict of interest involving a personal real estate investment. I personally feel that the position of Mr. Kerpelman is scurrilous, is entirely unjustified and is prompted by highly questionable motives. In order to satisfy the trial courts where the litigation is pending, as well as the citizens of Maryland that no impropriety or conflict whatsoever exists, I am requesting that you review the matter, pursuant to your authority contained in Article 19 A of the Maryland Code, and advise whether in your opinion any conflict does exist.

Honorable Marvin Mandel
October 21, 1969
Page two

Article 19 A, as amended by Chapter 402 of the Laws of Maryland of 1969, permits you as Governor (as, I understand no Board of Ethics has as yet been appointed), to determine whether an agency head is personally and substantially involved as a State official in a judicial or other proceeding in which he has a "financial interest" is defined by Section 2 of the Article.

Since you are one of the defendants in the suit which Mr. Kerpelman has sought to enjoin me from participating in, it might be that if you were to make a determination as to any possible conflict on my part, Mr. Kerpelman in turn would make an unfounded and malicious charge that you too were guilty of a conflict because you were acting in a matter in which you yourself would have a personal interest. Therefore, you might want to consider referring the matter to the Committee on Ethics of the Maryland State Bar Association for an advisory opinion which you could take into consideration in making your final determination under the provisions of Article 19 A.

Along with nine other partners I have an interest in 200 feet of ocean-front property in the northern part of Ocean City, Maryland, which property was conveyed to the partnership by deed dated March 15, 1969, recorded among the land records of Worcester County on April 3, 1969. We also purchased on January 9, 1969 an option on the adjacent parcel consisting of an additional 245 feet of ocean-front property. We have obtained a franchise from Holiday Inns of America and intend to build a Holiday Inn facility on this property. We have obtained bids from several construction companies and anticipate commencement of construction in the near future with a target date for opening of April 15, 1971. My capital share in this venture is approximately 10.5%. I own no other real estate, either directly or indirectly, which fronts upon oceans, rivers, bays or other navigable bodies of water in Maryland and specifically have no interest in real property fronting upon Sinepatuxent Bay or Assowoman Bay in Worcester County.

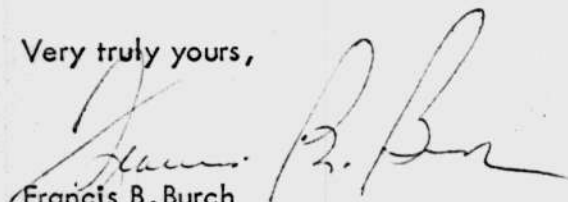
It is my firm belief that the ocean-front property in which I have an interest can in no way be affected by the outcome of Mr. Kerpelman's suit respecting transfers of wetlands by the Board of Public Works of Maryland in the tidal bays in Worcester County.

Under these circumstances I would very much appreciate your reviewing this situation and advising me as soon as possible whether you find any conflict between my personal investment and my representation of the Board of Public Works of Maryland in the litigation in question.

Honorable Marvin Mandel
October 21, 1969
Page three

I am enclosing for your consideration a copy of the Bill of Complaint and Demurrer in the Worcester County suit and of the Bill of Complaint and Answer in Mr. Kerpelman's suit against me.

Very truly yours,


Francis B. Burch
Attorney General

1200 Charles Center

P 164

10:55 AM
[Signature]

RECEIVED
SHERIFF'S OFFICE
OCT 2 10 04 AM '69
BALTIMORE CITY, MD.

CIRCUIT COURT No. 2

228
19 Docket No. 78/A

ELINOR H. KERPELMAN

vs.

FRANCIS B. BURCH

SUBPOENA TO ANSWER BILL OF COMPLAINT

[Handwritten Signature]

No. 42831/A

Filed day of, 19.....

Leonard J. Kerpelman
500 Equitable Bldg. Solicitor.

..... Address.

9-21

Summond Francis B Burch attorney General of Maryland and a copy of the process with a copy of the Bill of Complaint left with the Defendant at one Charles Center Building Room 1209 at 10:55 AM on the 2nd Day of October 1969 in the presence of Jot Conoff

*Frank J Pely
Sheriff*

Jell [unclear]

ELINOR H. KERPELMAN
2403 W. Rogers Avenue
Baltimore, Maryland 21209,

Complainant

v.

FRANCIS B. BURCH,
Attorney General of Maryland
207 Chancery Road
Baltimore, Maryland 21210,

Defendant

IN THE
CIRCUIT COURT
NO. 2
OF
BALTIMORE CITY

78 A - 228

42831A

10-1-69

(1) (2)

BILL OF COMPLAINT
FOR AN INJUNCTION

TO THE HONORABLE, THE JUDGE OF SAID COURT:

Now comes Elinor H. Kerpelman, the Complainant, by Leonard J. Kerpelman, her solicitor, and says:

1. That heretofore, in Case No. 42686 A, Docket 78A, Folio 142, in this Court, she filed suit for declaratory and other relief, including return to the people of the State of Maryland, of some 360 acres of submerged lands in Worcester county, Maryland, which had been purportedly conveyed by the predecessor Governor, and the Comptroller and the Treasurer of the State, acting as the then Board of Public Works, to certain real estate development corporations for the purpose of filling and resale by them to small holders, as building lots; and it was alleged in said suit that the conveyance was beyond any authority by statute or otherwise that the Board of Public Works had; and that the filling of the lands was a step in the direction of ecological disaster for Chesapeake Bay, which disaster would be quite unrequited by the minor tax returns the transactions would bring to the State; and that by virtue of the State of Maryland having had no authority or right, due to the peculiarity of its title, to convey the said submerged lands, that the economic and ecological disaster could be avoided in that the lands still belonged to, and title was still in, the people of the State of Maryland. The said case and cause of action has now been continued and transferred into the Circuit Court for Worcester county.

2. Nevertheless, the Defendant, purporting to represent a proper interest of the State and of the people of Maryland, entered an appearance in the said case as attorney for the Defendant Board of Public Works, and took, and continues to take, in said case, a legal position quite opposed to the interests of the State of Maryland, and quite opposed to the interests of the people of Maryland, and a position in no way advantageous to the Defendant Board of Public Works; but the said legal position taken by him is one fully, and entirely, and up to now exactly the same as, the legal position of at least one of the Defendant developers, and seeks to keep or place ownership of said lands out of the hands of the people of Maryland and the State of Maryland and into the hands of the Defendant developers in that Worcester county case aforesaid.

FIRST COUNT

3. Paragraphs 1 and 2 are repeated and realleged.
4. By the authority of the Maryland Constitution, Article V, Section 3, the Defendant is empowered as Attorney General of the State to represent State officers, Boards or agencies only in matters and only by a representation which protects some proper interest of the State of Maryland or the people thereof; the legal position which the Defendant has taken and is taking, in the Circuit Court No. 2 and Worcester county cases referred to in adhering to the position of the Defendant developers, represents no proper interest of the State or the people of Maryland.

SECOND COUNT

5. Paragraphs 1 and 2 are repeated and realleged.
6. Chapter 402, Laws of 1969, Sec. 1, amending Article 19A of the Annotated Code of Maryland, known as the "Conflict of Interest Law", provides that it shall be criminal and unlawful "...for any officer of any department...or other public agency...to participate personally^{*} and substantially as a state officer, ... through decision, recommendations, the rendering of advice..., or otherwise in a judicial or other proceeding, ...(or) contro-

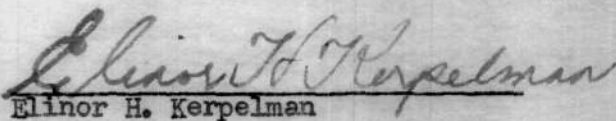
versy ... in which, to his knowledge, he...has a financial interest*... ."


The Defendant comes within the foregoing prohibition, in that he participates in the case as aforesaid, yet is one of ten partners, owners of two ocean front (though not "wetland") lots within the city limits of Ocean City in Worcester county, on which two said lots the partners propose to build a hotel or inn, in the future; and as a consequence of which the Defendant has a direct financial interest in having the question of ownership of submerged lands in front of shore lands on navigable waters - the legal question of greatest primacy in the aforesaid suits - resolved against the people and the State of Maryland; and as a consequence of such partnership, further, the Defendant has a direct financial interest in placating and favoring county zoning and public officials of Worcester county, who always wish to zone and rule against the public of Maryland at large, and in favor of developers, and in favor of the narrow, parochial interests of their own, native, home, county constituents only; and this direct financial interest in placating and favoring, referred to above, would be well-served by opposing the clear best interests of Maryland, and of all of its people, in the Worcester county case above referred to.

WHEREFORE, the Complainant prays,

- (a) That the Defendant be enjoined from representing any further the Defendants in the case in the Circuit Court of Worcester county referred to herein, and known as Elinor H. Kerpelman v. Marvin Mandel, et al.
- (b) That she may have such other and further relief as the nature of her case may require.

AND, AS IN DUTY BOUND, ETC.


Elinor H. Kerpelman


Leonard J. Kerpelman
Attorney for Complainant
500 Equitable Building
Baltimore 2, Maryland
SA 7-8700

* Amended by this 1969 Act from direct to plain.

ELINOR H. KERPELMAN
2403 W. Rogers Avenue
Baltimore, Maryland 21209,

Complainant

v.

FRANCIS B. BURCH,
Attorney General of Maryland
207 Chancery Road
Baltimore, Maryland 21210,

Defendant

IN THE
CIRCUIT COURT
NO. 2
OF
BALTIMORE CITY

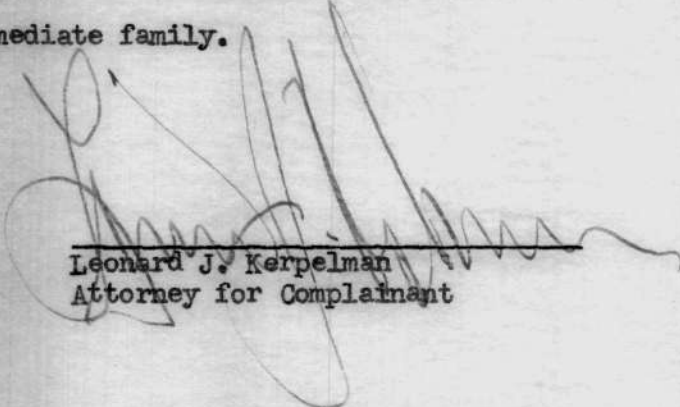
78 A 128
42 831-A
10-1-69
(2)

INTERROGATORIES
TO THE DEFENDANT

To the Defendant:

Now comes the Plaintiff, by Leonard J. Kerpelman, her attorney, and propounds the following Interrogatory to be answered pursuant to the Maryland Rules, fifteen days after the filing by you, of a responsive pleading herein:

What lands do you own, or have any interest in, in Worcester county; and what lands do you elsewhere own, or have an interest in, in Maryland, which are near or contiguous to bodies or streams of navigable water; and answer likewise as to members of your immediate family.



Leonard J. Kerpelman
Attorney for Complainant